

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**September 21, 2023 at 11:00 a.m.**

1. [18-25851-E-13](#)  
[22-2087](#)  
PGM-2

**ROBERT HUNTER**  
**Peter Macaluso**

**HUNTER V. FILLMORE GROUP TRUST**

**CONTINUED MOTION FOR ENTRY OF  
DEFAULT JUDGMENT AND/OR MOTION  
FOR COMPENSATION FOR PETER G.  
MACALUSO, PLAINTIFFS ATTORNEY(S)  
7-3-23 [\[32\]](#)**

**1 thru 5**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided.

The Proof of Service does not state that the Motion and supporting pleadings were served on Defendant. Rather, it states that the Summons was served by publication, pursuant to court order, Dckt. 15, on February 23, 2023, March 2, 2023, March 9, 2023, and March 16, 2023.

The Certificate of Service states that service was effectuated on July 3, 2023. The attestation states service by U.S. Mail, First Class, has been made to the address stated on the Deed of Trust and service has been made via email to lienservices@hotmail.com. However, the Attestation does not state the Motion was served by publication, like the Summons was.

Federal Rules of Civil Procedure Rule 5, as incorporated into Federal Rules of Bankruptcy Procedure 7005, governs service of pleadings and other papers, including a written motion or notice, appearance, demand, or offer of judgment, or similar paper. Federal Rule of Civil Procedure 5(a)(2) provides that no service is required on a party who is in default for failure to appear, stating:

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4

See also, Moore's Federal Practice - Civil which provides a discussion of the application of Federal Rule of Civil Procedure 5(a)(2) and that when a party fails to appear, service of the motion is not required. 1 MOORE'S FEDERAL PRACTICE - CIVIL § 5.03[2].

Here, service of the summons was effectuated on Defendant by publication and Defendant did not respond, thus Defendant was in default for failing to appear. Therefore, it does not appear that a Rule 55 Default Judgment needed to be served to Defendant. Thus, failure to serve Defendant by publication does not make insufficient notice.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Entry of Default Judgment is XXXXXXX .**

**The Motion for Attorney's Fees and Costs is XXXXXXX**

## DISCUSSION

Robert Hunter, Plaintiff-Debtor, requests this court to enter a Default Judgment of Declaratory Relief, Statutory Fine, and Attorney's Fees and Costs against Peachtree Group Trust et. al, Defendant. Dckt. 33. Plaintiff-Debtor alleges that Defendant recorded a second deed of trust on the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670 ("Property") without Plaintiff-Debtor's authorization or consent, thus clouding title. *Id.* Plaintiff-Debtor further contends that Defendant's second deed of trust on the Property was obtained "illegally [and/or] fraudulently." *Id.* at ¶ 6. Accordingly, Plaintiff-Debtor requests this court to find for Plaintiff-Debtor and enter a Default Judgment against Defendant, thereby curing the cloud on Plaintiff-Debtor's title and granting Plaintiff-Debtor attorney's fees.

Pursuant to Federal Rules of Civil Procedure 55, a default judgment may be entered by either the clerk of the court, or by the court upon its own initiative and findings. Fed. R. Civ. P. 55. In *Eitel v. McCool*, the Ninth Circuit enumerated the following factors for the court to consider when deciding whether to enter default judgment:

(1) the merits of the plaintiff's substantive claim; (2) the sufficiency of the complaint; (3) the sum of money at stake in the action; (4) the possibility of prejudice to the plaintiff; (5) the possibility of a dispute concerning material facts; (6) whether

the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decision on the merits.

*Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Importantly, “the general rule [is] that default judgments are ordinarily disfavored,” and it is preferred that issues ordinarily be decided on their merits. *Id.* at 1472.

In this Adversary Proceeding, Plaintiff-Debtor has not submitted sufficient evidence that would allow this court to enter a default judgment against Defendant. This court will not enter default judgment solely on the basis of well-pleaded facts in a complaint or motion.

Plaintiff-Debtor submitted a single Declaration in support of this Motion, Dckt. 34. It is the Declaration of Plaintiff-Debtor’s counsel. The testimony provided by Plaintiff-Debtor’s counsel is:

- A. Plaintiff-Debtor’s counsel filed this Adversary Proceeding. Dec., ¶ 3; Dckt. 34.
- B. That Plaintiff-Debtor’s counsel has personal knowledge (see ¶ 1 of the Declaration) that:

In the petition, the claim held by the Defendant did not hold a claim as the applicable 2<sup>nd</sup> Deed of Trust was obtained by Fraud, was not authorized, nor did Plaintiff’s [*sic*] have any contact with Fillmore Trust Group.

*Id.*

It is not clear how Plaintiff-Debtor’s counsel has personal knowledge that Fraud occurred, how the Petition addresses issues of fraud, and that if there was “fraud” then what was Plaintiff-Debtor’s conduct in reliance on the fraud. Also, it is not clear how Plaintiff-Debtor’s counsel has personal knowledge that Plaintiff-Debtor never had any contact with Fillmore Trust Group.

- C. Plaintiff-Debtor seeks recovery of \$8,000.00 in legal fees. *Id.*, ¶ 4.

Plaintiff-Debtor’s counsel does not authenticate any exhibits. However, unauthenticated Exhibit A is filed in support of the Motion. Dckt. 35. This is identified as an “Hourly Billing For Legal Services.” While the court could assume this is Plaintiff-Debtor’s counsel’s billing records, it does not state such and it is not authenticated. The Hourly Billing for Legal Services does not identify the attorney and the paralegal providing the services.

While it is true that the well-pleaded facts of this case indicate Defendant’s behavior sounds in fraud, this court cannot enter a default judgment without some further evidence justifying the relief sought.

In the same Motion, Plaintiff-Debtor has also requested this court grant Plaintiff-Debtor’s attorney’s fees and costs of \$8,000.00 associated in pursuing this matter. Dckt. 33. Requests for attorney’s fees should typically be made by separate motion within 14 day following the entry of judgment, and “such motion must specify the statute, rule, or other grounds giving rise to an entitlement to attorney’s fees.” *Lesnik v. Eisenmann SE*, Case No. 16-cv-01120-B:F, 2023 WL 3740318, at \*6 (N.D. of Cal. May 30, 2023).

Federal Rules of Civil Procedure 54(d)(2)(B) details what should be included in such motions, and how they should be filed with the court. In relevant part, the rule states:

(B) *Timing and Contents of the Motion*. Unless a statute or a court order provides otherwise, the motion must:

- (i) be filed no later than 14 days after the entry of judgment;
- (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
- (iii) state the amount sought or provide a fair estimate of it; and
- (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

Fed. R. Civ. P. 54(d)(2)(B).

This court has, when appropriate for the order or judgment to be entered, has allowed the motion for allowance of prevailing party fees to be heard in conjunction with the motion for an order or entry of default judgment. This reduces otherwise unnecessary costs and expenses by requiring multiple hearings when such are not warranted.

Merely because someone is a prevailing party does not grant them the right to attorney's fees. Under California Law, the prevailing party is entitled to recover attorney's fees and costs when such is so provided for by contract, statute, or law. See Cal. Civ. 1717, Cal. C.C.P. § 1033.5, and 7 WITKIN, CAL. PROC. 6TH JUDGM § 153 (2023).

The contractual, statutory, or law basis for the award of attorney's fees is not provided by Plaintiff-Debtor.

**September 21, 2023**

At the hearing, **xxxxxxx**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default Judgment filed by Debtor Robert Paul Hunter ("Plaintiff-Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Entry of Default Judgment is  
**xxxxxxxxxxxxxx**

2. [18-25851-E-13](#)  
[22-2087](#)  
CAE-1

ROBERT HUNTER  
Peter Macaluso

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-1-22 [[1](#)]

**HUNTER V. FILLMORE GROUP TRUST**

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Unknown

Adv. Filed: 9/1/22  
Summons Reissued: 9/15/22 [Dckt 6]  
Answer: none

Nature of Action:  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Continued from 8/24/23 to be heard in conjunction with other matters on the calendar.

<b>The Status Conference is continued to <span style="color: red;">XXXXXXX</span> on <span style="color: red;">XXXXXXX</span> , 2023.</b>
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**SEPTEMBER 21, 2023 STATUS CONFERENCE**

At the Status Conference, XXXXXXX

3. [18-25851-E-13](#)  
[22-2088](#)  
PGM-2

ROBERT HUNTER  
Peter Macaluso

HUNTER V. PEACHTREE GROUP TRUST

CONTINUED MOTION FOR ENTRY OF  
DEFAULT JUDGMENT AND/OR MOTION  
FOR COMPENSATION FOR PETER G.  
MACALUSO, PLAINTIFFS ATTORNEY(S)  
7-3-23 [\[33\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Entry of Default Judgment is XXXXXXXXXX**

**The Motion for Attorney's Fees and Costs is XXXXXXXX**

## DISCUSSION

Robert Hunter, Plaintiff, requests this court to enter a Default Judgment of Declaratory Relief, Statutory Fine, and Attorney's Fees and Costs against Peachtree Group Trust et. al, Defendant. Dckt. 33. Plaintiff alleges that Defendant recorded a second deed of trust on the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670 ("Property") without Plaintiff's authorization or consent, thus clouding title. *Id.* Plaintiff further contends that Defendant's second deed of trust on the Property was obtained "illegally [and/or] fraudulently." *Id.* at ¶ 6. Accordingly, Plaintiff requests this court to find for Plaintiff and enter a Default Judgment against Defendant, thereby curing the cloud on Plaintiff's title and granting Plaintiff attorney's fees.

Pursuant Federal Rules of Civil Procedure 55, a default judgment may be entered by either the clerk of the court, or by the court's own initiative. Fed. R. Civ. P. 55. In *Eitel v. McCool*, the Ninth Circuit enumerated the following factors for the court to consider when deciding whether to enter default judgment:

(1) the merits of the plaintiff's substantive claim; (2) the sufficiency of the complaint; (3) the sum of money at stake in the action; (4) the possibility of prejudice to the plaintiff; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decision on the merits.

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- A. Plaintiff-Debtor's counsel filed this Adversary Proceeding. Dec., ¶ 3; Dckt. 35.
- B. That Plaintiff-Debtor's counsel has personal knowledge (see ¶ 1 of the Declaration) that:

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- (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
- (iii) state the amount sought or provide a fair estimate of it; and
- (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.



Fed. R. Civ. P. 54(d)(2)(B).

This court has, when appropriate for the order or judgment to be entered, has allowed the motion for allowance of prevailing party fees to be heard in conjunction with the motion for an order or entry of default judgment. This reduces otherwise unnecessary costs and expenses by requiring multiple hearings when such are not warranted.

Merely because someone is a prevailing party does not grant them the right to attorney's fees. Under California Law, the prevailing party is entitled to recover attorney's fees and costs when such is so provided for by contract, statute, or law. See Cal. Civ. 1717, Cal. C.C.P. § 1033.5, and 7 WITKIN, CAL. PROC. 6TH JUDGM § 153 (2023).

The contractual, statutory, or law basis for the award of attorney's fees is not provided by Plaintiff-Debtor.

### **September 21, 2023 Hearing**

At the hearing, xxxxxxxxxxxx

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default Judgment filed by Debtor Robert Paul Hunter ("Plaintiff-Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Entry of Default Judgment is  
xxxxxxxxxxxxxx

4. [18-25851](#)-E-13  
[22-2088](#)  
CAE-1

**ROBERT HUNTER**  
**Peter Macaluso**

**CONTINUED STATUS CONFERENCE RE:**  
**COMPLAINT**  
9-1-22 [[1](#)]

**HUNTER V. PEACHTREE GROUP TRUST**

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Unknown

Adv. Filed: 9/1/22  
Summons Reissued: 9/15/22 [Dckt 6]  
Answer: none

Nature of Action:  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Continued from 8/24/23 to be heard in conjunction with other matters on the calendar.

<b>The Status Conference is continued to <span style="color: red;">XXXXXXX</span> on <span style="color: red;">XXXXXXX</span> , 2023.</b>
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**SEPTEMBER 21, 2023 STATUS CONFERENCE**

At the Status Conference, XXXXXXX

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 8, 2023. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span></b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Robert Paul Hunter ("Debtor"), is delinquent in Plan payments.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 7, 2023. Dckt. 167. Debtor states there are two adversary proceedings, Case No.'s 22-02087 and 22-02088, and they have motions for entry of default judgment for both. the adversaries. Debtor expects the default judgment will allow them to avoid two deeds of trust and obtain a reverse mortgage to pay off the Plan. Declaration, Dckt. 168.

Debtor requests that the Trustee's motion be denied or, in the alternative, continued for sixty (60) days to allow for resolution of the adversary proceedings.

## DISCUSSION

### Delinquent in Plan Payments

Debtor is \$4,172.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case.

However, Debtor asserts that if they avoid the two deeds of trust subject to the adversary proceeding, they can obtain a reverse mortgage to complete the Plan. Debtor asserts the hearings on their Motions for Entry of Default Judgment are set for August 24, 2023. Upon review of the adversaries' dockets, no motions for entry of default judgment have been filed or set for hearing.

### **REQUEST FOR CONTINUANCE**

On August 20, 2023, Debtor filed a request for continuance, as Debtor's Counsel was out of town and unavailable to attend the August 24, 2023 hearing. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) to continue the hearing.

Upon consideration of the *Ex Parte Motion*, the court continues the hearing on the Motion to Dismiss to September 21, 2023 at 11:00 a.m.

### **September 21, 2023**

At the Status Conference, **xxxxxxx**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion to Dismiss is **xxxxxxx**

6. [23-21667-E-11](#) **SOLANO COUNTY BLACK** **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#) **CHAMBER OF COMMERCE, INC.** **VOLUNTARY PETITION**  
**Le’Roy Roberson** **5-23-23 [1]**

Debtor’s Atty: Le’Roy Roberson

Notes:

Continued from 7/19/23

Operating Reports filed: 8/17/23 [ending 5/31/23]; 8/17/23 [ending 6/30/23] 8/17/23 [ending 7/31/23]

Trustee Report at 341 Meeting lodged 8/7/23

Trustee Report at 341 Meeting lodged 8/21/23

Trustee Report at 341 Meeting lodged 8/31/23

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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### **SEPTEMBER 21, 2023 STATUS CONFERENCE**

A review of the court’s Docket for this Bankruptcy Case reveals the following:

1. 341 Meeting of Creditors.
  - a. The Debtor and Counsel for the Debtor did not appear at the continued 341 Meeting of Creditors conducted on August 31, 2023.
  - b. The Debtor and Counsel for the Debtor did not appear at the continued 341 Meeting of Creditors conducted on August 21, 2023.
  - c. The Debtor and Counsel for the Debtor did appear at the continued 341 Meeting of Creditors conducted on August 7, 2023.
  - d. The Debtor did not appear at the continued 341 Meeting of Creditors conducted on July 18, 2023.
  - e. The Debtor and Counsel for the Debtor did appear at the continued 341 Meeting of Creditors conducted on July 11, 2023.
2. Monthly Operating Reports
  - a. The Monthly Operating Report for May 2023 was filed on August 17, 2023. Dckt. 60.

**Thursday, September 21, 2023 at 11:00 a.m.**

- (1) The Summary of Cash Activities shows that \$69,578 in cash was received in July 2023 and there were (\$75,052.82). MOR, § 2; Dckt. 60. This results in the Debtor in Possession having a negative (\$5,474) cash flow in July 2023. However, the Debtor in Possession states on the Monthly Operating Report having a positive \$5,474 cash flow for July 2023.
- b. The Monthly Operating Report for June 2023 was filed on August 17, 2023. Dckt. 59. It shows that the cash receipts and cash disbursements were about equal for the month of June 2023.
  - c. The Monthly Operating Report for July was filed on August 17, 2023. Dckt. 59. It shows a positive \$1,052 in cash flow for the month of July 2023.
3. US Trustee Motion to Dismiss. Dckt. 61.
  - a. On September 18, 2023, the US Trustee filed a Motion to Convert or Dismiss this Bankruptcy Case.
  - b. The US Trustee states that the Debtor/Debtor in Possession has not filed a proposed plan in this Subchapter V Case and the ninety (90) day period following the commencement of this case set forth in 11 U.S.C. § 1189(b) has expired.
  - c. The hearing on the US Trustee's Motion to Convert or Dismiss is set for November 2, 2023.

### **July 17, 2023 Filed Status Report**

On July 17, 2023, the Debtor/Debtor in Possession filed a Status Report. The court was not able to review it prior to the July 19, 2023 Status Conference. The Debtor/Debtor in Possession provides a detailed review of the events leading up to the filing of this Bankruptcy Case, a dispute concerning the default on a lease, the payment of post-petition rent, and ongoing efforts to resolve the dispute concerning the asserted default in rent payments.

### **JULY 19, 2023 STATUS CONFERENCE**

The Debtor in Possession has not filed a Status Report for the July 19, 2023 Status Conference. The First Meeting of Creditors was continued to July 17, 2023. July 11, 2023 Docket Entry Report.

This Bankruptcy Case was filed on May 23, 2023.

At the Status Conference, counsel for the Debtor/Debtor in Possession will be filing an application for employment in the next couple of days. The Debtor/Debtor in Possession is working on

getting the Debtor in Possession account set up. Counsel for the US Trustee reports that there are two monthly operating reports that have not been filed.

The Subchapter V Trustee reported that they are awaiting substantial documents and other documentation from the Debtor/Debtor in Possession. The Subchapter V Trustee reported that while counsel for the Debtor/Debtor in Possession has been diligent in communicating with the Subchapter V Trustee, the representative of the Debtor/Debtor in Possession has not been equally diligent.

Counsel for the landlord reported that they are not showing rent payment having been received from the Debtor/Debtor in Possession.

At the July 21, 2023 Status Conference, **XXXXXXX**

7. <a href="#"><u>23-20380-E-12</u></a> <a href="#"><u>CAE-1</u></a>	<b>TIMOTHY WILSON</b> <b>Mark Wolff</b>	<b>CONTINUED STATUS CONFERENCE RE:</b> <b>VOLUNTARY PETITION</b> <b>2-7-23 [1]</b>
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Debtor's Atty: Mark A. Wolff

Notes:

Continued from 7/19/23

[WW-2] Order dismissing Motion to Confirm the Plan without prejudice filed 7/25/23 [Dckt 122]

[RHS-1] Order Further Extending Deadline for Confirmation of Chapter 12 Plan filed 7/25/23 [Dckt 123]

Michael H. Meyer Chapter 12 Standing Trustee's Final Report and Account filed 8/4/23 [Dckt 125]

Trustee Report at 341 Meeting lodged 8/15/23

**The Status Conference is continued to **XXXXXXX** p.m. on **XXXXXXX** , 2023.**

### **SEPTEMBER 21, 2023 CONTINUED STATUS CONFERENCE**

The Trustee's September 14, 2023 Docket Entry Report states that the 341 Meeting of Creditors has been concluded.

At the Continued Status Conference, **XXXXXXX**

## **JULY 19, 2023 CONTINUED STATUS CONFERENCE**

At the Status Conference, counsel for the Debtor in Possession has retained Mr. Spacone and has provided his report of value. The low \$2,050,000 and high of \$2,350,000. The Debtor in Possession finds these values to be sufficient to proceed with a plan for liquidation of the real property.

At the hearing, counsel for the Debtor in Possession has retained Mr. Spacone and has provided his report of value. The low \$2,050,000 and high of \$2,350,000. The Debtor in Possession finds these values to be sufficient to proceed with a plan for liquidation of the real property. Counsel for Jana expressed similar concerns.

Counsel for Umpqua Bank stated that some concerns exist as to the proposed Plan. As to feasibility, it is concerned that the Debtor, as plan administrator, can actually sell the Real Property. Counsel for Jana Properties expressed similar concerns.

The productive discussions continued, with the creditors pressing the point of the need for employment of a profession to take on the responsibilities for the marketing and sale of the Real Properties (in light of Debtor's multiple unsuccessful bankruptcy filings). Some questions were raised about the Debtor's dramatic increase in income, which was stated by counsel being due to the sale of minerals on the Properties.

In the course of the discussions, counsel for Debtor in Possession appeared to acknowledge the need for an independent fiduciary for the Bankruptcy Estate taking over the marketing and sale of the Real Properties - which independent fiduciary would protect the economic interests of not only creditors, but the Debtor, in proceeding with a timely, commercially reasonable, fair market value sale of the Real Properties

Counsel for the Debtor in Possession reported that he would get on an application for employment as counsel for the Debtor in Possession. He also reaffirmed the continued communication and hopeful collaboration with the creditors and the Chapter 12 Trustee.